



Signed and Filed: April 11, 2022

Dennis Montali

DENNIS MONTALI
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:) Bankruptcy Case
PG&E CORPORATION,) No. 19-30088-DM
) Chapter 11
- and -) Jointly Administered
PACIFIC GAS AND ELECTRIC COMPANY,)
Reorganized Debtors.)
) Date: April 13, 2022
☐ Affects PG&E Corporation) Time: 10:00 AM
☐ Affects Pacific Gas and) www.canb.uscourts.gov/calendars
Electric Company)
☒ Affects both Debtors)
)
* All papers shall be filed in)
the Lead Case, No. 19-30088 (DM).)

TENTATIVE RULING RE DISPUTE BETWEEN DEBTORS
AND THE CALIFORNIA DEPARTMENT OF WATER RESOURCES

When Debtors' filed their *Preliminary Opposition to California Department of Water Resources' Motion for Order Determining that Castle Rock Agreement with PG&E Cannot be Assumed and that The Department of Water Resources' Claim No. 78104 be Paid; and Request, in the Alternative for a Status Conference* (Dkt. 11937), they suggested that in the event the

1 court did not send the dispute between them and The California
2 Department of Water Resources ("CDWR") to arbitration, the court
3 should conduct a "status conference to establish a schedule for
4 briefing on the merits and further proceedings."

5 In the *Memorandum Decision Regarding Dispute Between*
6 *Debtors and The California Department of Water Resources* (Dkt.
7 11999), the court observed that if the outcome of the dispute is
8 as CDWR wishes, "the matter is over." On the other hand, "If
9 the outcome favors Debtors, the question of liquidation of the
10 amount of damages to be paid by [C]DWR may be more appropriately
11 determined through arbitration." (emphasis in the original).

12 The court identified the critical issue in dispute:

13 "There are no material facts in dispute regarding
14 whether [C]DWR should or should not be ordered to pay
15 its share of the net loss upon termination of the
16 Agreement. [C]DWR looks to Section 14.5 of the
17 Agreement to insulate it from such a charge because
18 the other parties continued to operate under it.
19 Debtors rely on Section 14.7 to hold [C]DWR
20 responsible for its share for termination in the
21 future." *Memorandum Decision*, at pg. 7.

22 In concluding its decision, the court directed Debtors to
23 file a memorandum "limited to [the] discrete issue described
24 above. . . ." *Id.*

25 Instead of complying with the court's directive, Debtors
26 filed their *Memorandum of the Reorganized Debtors Regarding*
27 *Claim of California Department of Water Resources* (Dkt. 12076),
28 announcing (1) that it would be best for them to pay CDWR's
Claim No. 78104 in full, plus interest; (2) that they do not
contest that CDWR terminated its participation in the Cotenancy
Agreement; and (3) that they "reserve their rights to pursue

1 their claim against CDWR for its pro rata share of the removal
2 cost associated with the New Line. . . .” Then they
3 unilaterally - but erroneously - concluded that their
4 concessions (and presumably their purported reservation of
5 rights) terminated the core matters to be decided by this court.

6 The court regards this tactic of Debtors an inappropriate
7 and improper change of position and forum shopping because they
8 had lost in the forum of their choice, and now were,
9 reluctantly, before this same court to decide what it plainly
10 identified as a critical and discrete issue.

11 Under the guise of reserving their rights, the Debtors
12 simply ignored the direction by this court to address the merits
13 of their disagreement with CDWR following its Termination By a
14 Cotenant under Section 14.3 of the Cotenancy Agreement. This
15 can only be construed as an intentional waiver of the right to
16 be heard further on this issue in this court.

17 The court is inclined agree with CDWR as set forth in its
18 *Reply to PG&E’s Memorandum Regarding Department of Water*
19 *Resources’ Claim No. 78104 and Further Briefing of Issues;*
20 *Request for Order Staying Arbitration* (Dkt 12129 at pgs. 10-14)
21 and to issue an order resolving this dispute in CDWR’s favor
22 based upon (1) the record that there are no material facts in
23 dispute; (2) that CDWR’s interpretation of the applicable
24 sections of the Cotenancy Agreement is correct; (3) that CDWR
25 does not owe any estimated future removal costs or anything else
26 to Debtors and the remaining cotenants under the Cotenancy
27 Agreement; and (4) there are no damages to be assessed, by this
28 court or by arbitration, under that agreement.

1 In reaching this tentative conclusion, the court does not
2 disagree that any dispute between CDWR on the one hand and City
3 of Santa Clara dba Silicon Valley Power and Northern California
4 Power Agency, on the other, under the Transmission Services
5 Agreement, should be dealt with outside of this court and
6 presumably by arbitration.

7 While there does not appear to be any basis for an
8 injunction regarding the Transmission Services Agreement against
9 parties to it and that aspect of any arbitration, any request by
10 CDWR for injunctive relief against Debtors or any other party
11 regarding the Cotenancy Agreement will require a proper
12 adversary proceeding and if necessary, a request for a temporary
13 restraining order or a preliminary injunction.

14 **END OF TENTATIVE RULING**
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